IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 202 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHOBI JASHRAJ BHERAJI

Versus

CHHOTABHAI NARSHIBHAI PATEL

Appearance:

1. Civil Revision Application No. 202 of 1982

MR RN SHAH for Petitioner No. 1-1/9

MR MI PATEL for Respondent No. 1

..... for Respondent No. 1,1-1/2

NOTICE SERVED for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/08/2003

ORAL JUDGEMENT

The petitioner is a tenant of respondents No.1, 2 and 3. Respondent No.4 is a sub tenant of petitioner. The landlords-respondents No.1, 2 and 3 filed a suit H.R.P. Civil Suit No.2314 of 1975 against the petitioner and the respondent No.4 for the recovery of possession of the suit premises. The trial court framed eight issues for decision.

(1) Whether plaintiffs are entitled to file this suit? The finding was recorded in affirmative.

(2) Whether the plaintiffs are entitled to possession on the ground of arrears of rent? The finding was recorded in negative.

(3) Whether the plaintiffs prove that defendant No.1 has sublet or transferred suit premises to defendant No.2 illegally and against contract and is profiteering ? The finding was recorded in affirmative.

(4) Whether the plaintiffs prove that the defendant has changed the user of suit premises against the contract ? The finding was record in the affirmative.

(5) Regarding the issue of standard rent of the suit premises, the trial court decided Rs.55/- per month as the standard rent of the suit premises.

(7) Whether the plaintiffs are entitled to possession ? The finding was recorded in affirmative.

The trial court has passed the order directing the defendants to deliver the possession of the suit premises to the plaintiffs and the defendant was directed to pay Rs.440/- as rent and mesne profits upto the date of the suit and mesne profit at the rate of Rs.55/- per month from the date of the suit till the delivery of the possession to the petitioner. The defendants were given three months time to deliver the possession of the suit premises.

2) Being aggrieved from the judgement and order dated 12th of June, 1978 passed by the trial court, the petitioner filed appeal No.199/1978 before the appellate bench of the Court of Small Causes at Ahmedabad. After

hearing the parties and considering the material on record, the appeal was dismissed by the appellate bench vide order dated 16th of September, 1981.

3) Against both the judgements, this revision has been preferred by the petitioner, challenging the evidence recorded by the courts below under Section 29 (2) of the Bombay Hotel and Lodging House Rates Control Act, 1947 (in short "Rent Act"). Heard the learned counsel of the parties and perused the relevant papers on record. The contention of the learned counsel for the petitioner is that the landlords have failed to establish that the petitioner has let out the premises to the respondent No.4 (defendant No.2). He referred to the judgement of the trial court wherein the issue as to whether the plaintiffs are entitled to possession on the ground of arrears of rent ? the finding recorded by the trial court is in negative. He also referred to the judgement of the trial court wherein it is mentioned as under :

> "There is no proof of subletting so I hold that the plaintiffs have failed to prove that the defendant No.1 has sublet or transferred the flour mill in the suit premises to anyoneelse or he is not running it."

4) He also made an attempt to say that there is discrepancy regarding the defendant No.2. The witness examined stated that he does not know the defendant No.2 by name or where he lives ? after seeing he book, he stated that he lives in Ganeshpura, Kalidas Building. The trial court has also held that the evidence produced by the plaintiff landlords is very weak type of evidence as it is observed by the trial court that no doubt these pieces of evidence are weak piece of evidence and by themselves they would not lead anywhere. But the plaintiff No.1 stated that defendant No.2 lives in the back portion of the suit premises for some time prior to the suit. Application moved on behalf of defendant No.2 Exh.43/1 for the issuance of the ration card is not proved and cannot be led in evidence. It is found by both the courts below that the said premises was rented to the defendant No.1 tenant for conducting the business of flour mill. Both the courts below have found that the flour mill is still in existence and is being conducted by the son of defendant No.1. As such the defendant No.2 is not proved to be in exclusive possession over the suit premises. The contention of the learned counsel for the petitioner is that even though if it is assumed that defendant No.2 is living in the suit premises, there is

no evidence that he was sub-tenant in exclusive possession of the property in dispute and he had paid any rent. In support of his contention, he relied on the decision of the Honourable Supreme Court in the case of Dipak Banerjee Vs. Smt.Lilavati Chakravarti reported in AIR 1987, Supreme Court 2055, wherein it is observed that there is no evidence on the fact that the alleged sub-tenant was in exclusive occupation of any part of the premises over which the tenant had not retained any control. This aspect was neither there in pleading nor in evidence at all. Further, sub-tenancy as such is not defined in the Act. The sub-tenancy under the T.P. Act is governed by Section 108 (o) of the said Act and it defines sublease as a lease of immovable property as a transfer of rights to enjoy such property made for a certain time, expressed or implied or in perpetuity of any consideration of a price paid or promised or of money or share of crop, service or any other thing of value, to be rendered periodically or on the specified occasions to the transferee by the transferor, who accepts transfer on such terms. There is no clear evidence in the case as to what amount of lease the alleged sub tenant used to perform for the tenant. On the other hand, he did perform some work which could be considered to be in lieu of his right to occupy the portion of the premises.

5) He also relied on the decision of the Honourable Supreme Court in the case of Gopal Saran Vs. Satyanarayan reported in AIR 1989 Supreme Court 1141, wherein it is held that the question whether there is a tenancy or license or parting with possession in a particular case must depend upon quality of occupation given to the licensee or the transferee, mere occupation is not sufficient to infer either sub-tenancy or parting with the possession.

6) On the basis of the evidence, the learned counsel for the petitioner submitted that the petitioner has not left or surrendered or transferred the possession of the suit premises to the defendant No.2. He is still in occupation and flour mill is being conducted by his son. Hence, the plaintiffs have miserably failed to prove that he has sublet the property in dispute to the defendant No.2, as he has not parted with the property to the defendant No.2 or he has not given exclusive possession to the defendant No.2. Hence, the courts below have committed error in holding otherwise.

7) The learned counsel for the respondents, Mr.Patel contended that the landlords have proved that it is a shop of 40 X 20 ft. The defendant No.1 has let out half

portion of the suit property to the defendant No.1, wherein the defendant No.2 along with his family members is residing and use of property is changed, and both the courts below have found on the basis of the evidence on record that the property was sublet to the defendant No.2. Hence, this Court should not interfere with the concurrent findings recorded by the Courts below.

8) I have considered the contentions of the learned counsel for the parties carefully and perused papers on record. The trial court after discussing the evidence on record has held that the plaintiffs have proved that the defendant No.1 has sublet or transferred the back portion of the suit premises to the defendant No.2, who is using it as a residence. This finding has been recorded on the basis of the evidence of the parties, as well as, the inconsistency of the evidence of the defendant regarding the possession of the defendant No.2. I have also considered the reasonings of the courts below for arriving at the conclusion. The notice was sent to the defendant No.2 at the address of the suit premises and the defendant No.2 received that notice at the address of the suit premises vide postal acknowledgement Exh.22. The summons was served on the defendant No.2 at the address of the suit premises and it was received by the defendant No.2's son, Kanubhai on behalf of defendant No.2. The plaintiff has also produced the record of Municipal Corporation, Ahmedabad. In the notice back portion was separately numbered as MC No.93/10/19/2 and serial No.45/88/1 and the name of the occupier was mentioned as Dahyabhai Bulakhidas, defendant No.2. The purpose of the occupation was shown as residence, as well as shop (Dhobi). Bill of the Municipal Corporation for the year 1975/1976 in respect of the same premises rear portion of the suit property bearing MC No.93/10/19/2 and defendant no.2 was shown as occupier of that portion. In the similar bill for 1976/1977 same entries were found. Exh.59 is the bill of the Municipal Corporation in respect of the education cess for the rear portion bearing No.93/10/19/2 with the same details and the defendant No.2 has been referred as a sub-tenant. The witness of the plaintiff stated that the application was made by Babubhai Dahyabhai, son of defendant No.2 for ration card on 8-1-1975 and in all 16 members are said to have been stated living in the same premises. Application was allowed and ration card was registered. The plaintiff also examined one witness Mavjibhai, he deposed that name of defendant No.2 is registered at No.G-62 in Exh.43/1 ration card. The address is stated as Ganeshpura, Kalidas Building and also stated that Dahyabhai, defendant NO.2 was doing washerman's business.

Kalidas Building is said to be in the mohalla of Ganeshpura. Prabhu Nivas and Kalidas Building are adjacent to each other and belong to the plaintiff. The certified copy of the electoral roll of the legislative assembly for the year 1975 produced by the plaintiff shows that Dahyabhai Bulakhidas, Narmadaben Dahyabhai, Babubahi Dahyabhai and Jashodaben Babubhai are mentioned as voters with address shown as Ganeshpura, Vaghari-thakorvas and the house number mentioned as 93/10/51. Though in this respect, the observation of the lower appellate court is that such piece of evidence does not help the case of the plaintiff. Considering the material on record and the evidence, the lower appellate court has confirmed the findings recorded by the trial court. The finding of the trial court is that a part of the suit premises has been unlawfully sublet by the defendant No.1 to defendant No.2 and defendant No.2 is also residing in the rear portion of that premises.

9) I have considered thoroughly. I could not get any infirmity or illegality in recording the evidence or in deciding the suit filed by the petitioner and confirmed by the lower appellate court and I find no good reason calling for interference with the concurrent findings recorded by the trial court and confirmed by the lower appellate court. Accordingly, the revision application fails. Rule is discharged. Ad-interim relief, if any, granted earlier stands vacated.

10) At last, the learned counsel for the petitioner submitted that sometime may be granted to vacate the suit premises. In the facts and circumstances, it would be appropriate if six months time is granted to the petitioner to vacate the suit premises. Accordingly the petitioner is granted six months time to vacate the suit premises.

(KUNDAN SINGH, J.)
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